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7 Attorneys for Defendants
JOSEPH E. BARATTA AND TBIG FINANCIAL
8 SERVICES, INC.

9
10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN JOSE DIVISION

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14
15 VIOLETTA ETTARE,

16 Plaintiff,

17 v.

18 JOSEPH E. BARATTA, an individual, TBIG
19 FINANCIAL SERVICES, INC., form of
20 business unknown, WACHOVIA
SECURITIES, LLC, a Delaware Limited
21 Liability Company, MARK WIELAND, and
individual, and DOES 1-25,

22 Defendants.
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Case No. C-07-04429-JW

DECLARATION OF GILBERT R.
SEROTA IN SUPPORT OF THE TBIG
DEFENDANTS' MOTION TO
COMPEL ARBITRATION AND
STAY PROCEEDINGS

Date: May 5, 2008
Time: 9:00 A.M.
Judge: Hon. James Ware

Trial Date: TBD

1 I, GILBERT R. SEROTA, declare as follows:

2
3 1. I am an attorney duly licensed to practice in the State of California and in
4 this Court. I am a director with the law firm of Howard Rice Nemerovski Canady Falk &
5 Rabkin, attorneys of record for Defendants JOSEPH E. BARATTA ("Mr. Baratta"), and
6 TBIG FINANCIAL SERVICES, INC. ("TBIG") (collectively, the TBIG Defendants"). I
7 have personal knowledge of the facts set forth below and, if called as a witness, I could and
8 would testify competently thereto.

9 2. On August 29, 2007, I sent counsel for Plaintiff Violetta Ettare ("Plaintiff"
10 or "Dr. Ettare"), Christopher Cooke of Cooke Kobrick & Wu LLP, an email requesting that
11 Plaintiff stipulate to a joint arbitration with all Defendants and stating that Mr. Baratta and
12 TBIG intended to join in any motion to compel filed by Wachovia and Mr. Wieland. I
13 copied counsel for Wachovia and Mr. Wieland, Terry Ross of Keesal, Young & Logan, on
14 my August 29, 2007 email correspondence.

15 3. On September 6, 2007, counsel for all parties engaged in multiple email
16 exchanges wherein I joined counsel for the Wachovia Defendants requesting Plaintiff
17 stipulate to binding arbitration, while Mr. Cooke stated his client would not agree to have the
18 case referred to arbitration.

19 4. On February 14, 2008, Audette Paul Morales, counsel for the Wachovia
20 Defendants, sent an email to Mr. Cooke, on behalf of all Defendants, again requesting that
21 Plaintiff stipulate to binding arbitration.

22 5. On February 21, 2008, Mr. Cooke responded to counsel for all Defendants,
23 requesting additional copies of Dr. Ettare's signed account agreements containing arbitration
24 clauses and agreements. Those agreements were provided to Mr. Cooke via email on
25 February 22, 2008.

26 6. On February 27, 2008, Ms. Morales sent Mr. Cooke a follow up email again
27 requesting Plaintiff's position on stipulating to binding arbitration. I was copied on Ms.
28 Morales's email and followed up with an email to Mr. Cooke asking Plaintiff to agree to

1 arbitration. That same day, Mr. Cooke responded to counsel for all Defendants refusing to
2 stipulate to arbitration, and as of the date of this Declaration, Plaintiff still has not agreed to
3 voluntarily submit this matter to arbitration.
4

5 I declare under penalty of perjury under the laws of the United States that the foregoing
6 is true and correct, and that this Declaration was executed in San Francisco, California on
7 March 6, 2008.

8
9 /s/
GILBERT R. SEROTA

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13 HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
14
15 A Professional Corporation